

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

W.O., a minor, by and through her guardian
ad litem, SHANNA OVERCAST,

Plaintiff,

vs.

UNITED STATES OF AMERICA, and
DOES 1-100,

Defendants.

CASE NO. 10 CV 0632 MMA (RBB)

**ORDER DISMISSING
PLAINTIFF'S ACTION WITHOUT
PREJUDICE FOR FAILURE TO
PROSECUTE**

Plaintiff W.O., a minor proceeding through her guardian ad litem, Shanna Overcast, initiated this action on March 24, 2010 for injuries she allegedly sustained while visiting Fort Rosecrans National Cemetery when a tombstone collapsed on her leg and ankle. [Doc. No. 1.] On August 18, 2011, Frantz Law Group filed a motion to withdraw as Plaintiff's counsel of record. [Doc. No. 51.] Ms. Overcast consented to the firm's request to withdraw. [*Id.* ¶6.] On September 21, 2011, the Court granted Frantz Law Group's motion to withdraw, and granted Ms. Overcast 30 days to obtain new counsel.¹ [Doc. No. 56.] On October 19, 2011, Ms. Overcast filed an *ex parte* application requesting additional time to retain an attorney. [Doc. No. 58.] The Court granted Ms. Overcast's request on October 20, 2011, giving her an additional 60 days to retain counsel.

¹ In cases such as this where a minor is proceeding by and through a guardian ad litem, the guardian cannot proceed pro se and must be represented by counsel. *Gulbransen v. Far N. Reg'l Ctr.*, 2011 U.S. Dist. LEXIS 64745 *3-4 (E.D. Cal. Jun. 17, 2011).

1 Ms. Overcast's time to retain new counsel has expired. The Court twice cautioned Ms.
2 Overcast that if new counsel did not file a notice of appearance within the time permitted, the
3 Court may dismiss her action without further notice. [Doc. Nos. 56, 59.] Although public policy
4 generally favors disposition of cases on their merits, a case cannot move forward toward resolution
5 on the merits when the plaintiff's conduct impedes or completely prevents progress in that
6 direction. *See, e.g., Hernandez v. City of El Monte*, 138 F.3d 393, 399 (9th Cir. 1998); *In re Eisen*,
7 31 F.3d 1447, 1454 (9th Cir. 1994).

8 Accordingly, upon due consideration, and given the procedural posture of this case, the
9 Court hereby **DISMISSES** the above-captioned action **WITHOUT PREJUDICE**. The Clerk of
10 Court is instructed to close the case file.

11 **IT IS SO ORDERED.**

12 DATED: January 25, 2012



Hon. Michael M. Anello
United States District Judge